

**Senator Allen M. Christensen** proposes the following substitute bill:

**TOBACCO TAX AMENDMENTS**

2009 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Allen M. Christensen**

House Sponsor: \_\_\_\_\_

---

**LONG TITLE**

**General Description:**

This bill increases the tax on tobacco products.

**Highlighted Provisions:**

This bill:

- ▶ increases the tax on cigarettes, moist snuff, and other tobacco products;
- ▶ eliminates the Cigarette Tax Restricted Account;
- ▶ creates the Cigarette and Tobacco Products Tax Restricted Account;
- ▶ provides for deposits to the account;
- ▶ allocates \$10,500,000 annually from the account for various programs; and
- ▶ restricts the use of remaining account monies for health-related programs, subject to

legislative appropriation.

**Monies Appropriated in this Bill:**

None

**Other Special Clauses:**

This bill takes effect July 1, 2009.

**Utah Code Sections Affected:**

AMENDS:

**59-14-204**, as last amended by Laws of Utah 2008, Chapter 382



59-14-302, as last amended by Laws of Utah 2008, Chapter 204  
63J-1-201, as last amended by Laws of Utah 2008, Chapter 213 and renumbered and  
amended by Laws of Utah 2008, Chapter 382

ENACTS:

59-14-701, Utah Code Annotated 1953

---

*Be it enacted by the Legislature of the state of Utah:*

Section 1. Section 59-14-204 is amended to read:

**59-14-204. Tax basis -- Rate -- Future increase -- Restricted account -- Use of revenues.**

(1) Except for cigarettes described under Subsection 59-14-210(3), there is levied a tax upon the sale, use, storage, or distribution of cigarettes in the state.

(2) The rates of the tax levied under Subsection (1) are:

(a) ~~[3.475]~~ 10 cents on each cigarette, for all cigarettes weighing not more than three pounds per thousand cigarettes; and

(b) ~~[4.075]~~ 11.725 cents on each cigarette, for all cigarettes weighing in excess of three pounds per thousand cigarettes.

(3) Except as otherwise provided under this chapter, the tax levied under Subsection (1) shall be paid by any person who is the manufacturer, jobber, importer, distributor, wholesaler, retailer, user, or consumer.

(4) The tax rates specified in this section shall be increased by the commission by the same amount as any future reduction in the federal excise tax on cigarettes.

~~[(5) (a) There is created within the General Fund a restricted account known as the "Cigarette Tax Restricted Account."]~~

~~[(b) Beginning on July 1, 1998, \$250,000 of the revenues generated by the increase in the cigarette tax under this section enacted during the 1997 Annual General Session shall be annually deposited into the account.]~~

~~[(c) The Department of Health shall expend the funds deposited in the account under Subsection (5)(b) for a tobacco prevention and control media campaign targeted towards children.]~~

~~[(d) The following revenue generated from the tax increase imposed under Subsection~~

(1) during the 2002 General Session shall be deposited in the Cigarette Tax Restricted Account;]

~~[(i) 22% of the revenue to be annually appropriated to the Department of Health for tobacco prevention, reduction, cessation, and control programs;]~~

~~[(ii) 15% of the revenue to be annually appropriated to the University of Utah Health Sciences Center for the Huntsman Cancer Institute for cancer research; and]~~

~~[(iii) 21% of the revenue to be annually appropriated to the University of Utah Health Sciences Center for medical education at the University of Utah School of Medicine.]~~

~~[(e) Any balance remaining in the Cigarette Tax Restricted Account at the end of the fiscal year shall be appropriated during the next fiscal year for the purposes set forth in Subsections (5)(d)(i) through (5)(d)(iii) in proportion to the amount of revenue deposited into the account for each purpose.]~~

~~[(f) The Legislature shall give particular consideration to appropriating any revenues resulting from the change in tax rates under Subsection (2) adopted during the 2002 Annual General Session and not otherwise appropriated pursuant to Subsection (5)(d) to enhance Medicaid provider reimbursement rates and medical coverage for the uninsured.]~~

~~[(g) Any program or entity that receives funding under Subsection (5)(d) shall provide an annual report to the Health and Human Services Interim Committee no later than September 1 of each year. The report shall include:]~~

~~[(i) the amount funded;]~~

~~[(ii) the amount expended;]~~

~~[(iii) a description of the effectiveness of the program; and]~~

~~[(iv) if the program is a tobacco cessation program, the report required in Section 51-9-203.]~~

Section 2. Section **59-14-302** is amended to read:

**59-14-302. Tax basis -- Rates.**

(1) As used in this section:

(a) "Manufacturer's sales price" means the amount the manufacturer of a tobacco product charges after subtracting a discount.

(b) "Manufacturer's sales price" includes an original Utah destination freight charge, regardless of:

- 88 (i) whether the tobacco product is shipped f.o.b. origin or f.o.b. destination; or  
89 (ii) who pays the original Utah destination freight charge.
- 90 (2) There is levied a tax upon the sale, use, or storage of tobacco products in the state.
- 91 (3) The tax levied under Subsection (2) shall be paid by the manufacturer, jobber,  
92 distributor, wholesaler, retailer, user, or consumer.
- 93 (4) The rate of the tax under this section is:
- 94 (a) for tobacco products except for moist snuff, [~~35%~~] 88% of the manufacturer's sales  
95 price; or
- 96 (b) subject to Subsection (5), for moist snuff, [~~\$ .75~~] \$2.15 per ounce.
- 97 (5) (a) The tax under this section on moist snuff shall be imposed on the basis of the  
98 net weight of the moist snuff as listed by the manufacturer.
- 99 (b) If the net weight of moist snuff is in a quantity that is a fractional part of one ounce,  
100 a proportionate amount of the tax described in Subsection (4)(b) is imposed:
- 101 (i) on that fractional part of one ounce; and  
102 (ii) in accordance with rules made by the commission in accordance with Title 63G,  
103 Chapter 3, Utah Administrative Rulemaking Act.

104 Section 3. Section **59-14-701** is enacted to read:

105 **Part 7. Cigarette and Tobacco Products Tax Restricted Account**

106 **59-14-701. Cigarette and Tobacco Products Tax Restricted Account.**

- 107 (1) There is created within the General Fund a restricted account known as the  
108 "Cigarette and Tobacco Products Tax Restricted Account."
- 109 (2) The Cigarette and Tobacco Products Tax Restricted Account shall consist of:
- 110 (a) private contributions;
- 111 (b) legislative appropriations; and
- 112 (c) revenue generated under the cigarette tax and the tobacco products tax, as specified  
113 in Subsection (4).
- 114 (3) (a) The state treasurer shall invest monies in the account according to Title 51,  
115 Chapter 7, State Money Management Act.
- 116 (b) The Division of Finance shall deposit interest or other earnings derived from  
117 investment of account monies into the General Fund.
- 118 (c) The Division of Finance shall deposit the remaining account balance of the

Cigarette Tax Restricted Account into the Cigarette and Tobacco Products Tax Restricted Account.

(4) (a) The Tax Commission shall deposit into the account:

(i) \$56,975,000 annually from the revenues generated by the cigarette tax imposed under Section 59-14-204; and

(ii) \$5,400,000 annually from the revenues generated by the tobacco products tax under Section 59-14-302.

(b) If the revenues generated under Sections 59-14-204 and 59-14-302 are less than the amounts to be deposited under Subsection (4)(a), the Tax Commission shall deposit into the account the actual amount of revenues generated under Sections 59-14-204 and 59-14-302.

(5) (a) The Division of Finance shall allocate funds from the account as follows:

(i) \$2,500,000 annually to the Department of Health for tobacco prevention, reduction, cessation, and control programs;

(ii) \$4,400,000 annually to the University of Utah Health Sciences Center for the Huntsman Cancer Institute for cancer research; and

(iii) \$3,600,000 annually to the University of Utah Health Sciences Center for medical education at the University of Utah School of Medicine.

(b) When the Legislature appropriates funds from the account in addition to the allocations under Subsection (5)(a), the funds may only be used for health-related programs, as specified in the appropriation.

(c) If cigarette and tobacco product tax revenues deposited into the account under Subsection (4) are less than the total amount to be allocated under Subsections (5)(a) and (b), the allocation amounts under Subsections (5)(a) and (b) shall be reduced by an equal percentage to match the amounts deposited pursuant to Subsection (4).

Section 4. Section **63J-1-201** is amended to read:

**63J-1-201. Governor to submit budget to Legislature -- Contents -- Preparation -- Appropriations based on current tax laws and not to exceed estimated revenues.**

(1) (a) The governor shall, within three days after the convening of the Legislature in the annual general session, submit a budget for the ensuing fiscal year by delivering it to the presiding officer of each house of the Legislature together with a schedule for all of the proposed appropriations of the budget, clearly itemized and classified.

- 150 (b) The budget message shall include:
- 151 (i) a projection of estimated revenues and expenditures for the next fiscal year; and
- 152 (ii) the source of all direct, indirect, or in-kind matching funds for all federal grants or
- 153 assistance programs included in the budget.
- 154 (2) At least 34 days before the submission of any budget, the governor shall deliver a
- 155 confidential draft copy of the governor's proposed budget recommendations to the Office of the
- 156 Legislative Fiscal Analyst.
- 157 (3) (a) The budget shall contain a complete plan of proposed expenditures and
- 158 estimated revenues for the next fiscal year based upon the current fiscal year state tax laws and
- 159 rates.
- 160 (b) The budget may be accompanied by a separate document showing proposed
- 161 expenditures and estimated revenues based on changes in state tax laws or rates.
- 162 (4) The budget shall be accompanied by a statement showing:
- 163 (a) the revenues and expenditures for the last fiscal year;
- 164 (b) the current assets, liabilities, and reserves, surplus or deficit, and the debts and
- 165 funds of the state;
- 166 (c) an estimate of the state's financial condition as of the beginning and the end of the
- 167 period covered by the budget;
- 168 (d) a complete analysis of lease with an option to purchase arrangements entered into
- 169 by state agencies;
- 170 (e) the recommendations for each state agency for new full-time employees for the next
- 171 fiscal year; which recommendation should be provided also to the State Building Board under
- 172 Subsection 63A-5-103(2);
- 173 (f) any explanation the governor may desire to make as to the important features of the
- 174 budget and any suggestion as to methods for the reduction of expenditures or increase of the
- 175 state's revenue; and
- 176 (g) the information detailing certain regulatory fee increases required by Section
- 177 63J-1-303.
- 178 (5) The budget shall include an itemized estimate of the appropriations for:
- 179 (a) the Legislative Department as certified to the governor by the president of the
- 180 Senate and the speaker of the House;

- 181 (b) the Executive Department;
- 182 (c) the Judicial Department as certified to the governor by the state court administrator;
- 183 (d) payment and discharge of the principal and interest of the indebtedness of the state;
- 184 (e) the salaries payable by the state under the Utah Constitution or under law for the
- 185 lease agreements planned for the next fiscal year;
- 186 (f) other purposes that are set forth in the Utah Constitution or under law; and
- 187 (g) all other appropriations.
- 188 (6) Deficits or anticipated deficits shall be included in the budget.
- 189 (7) (a) (i) For the purpose of preparing and reporting the budget, the governor shall
- 190 require from the proper state officials, including public and higher education officials, all heads
- 191 of executive and administrative departments and state institutions, bureaus, boards,
- 192 commissions, and agencies expending or supervising the expenditure of the state moneys, and
- 193 all institutions applying for state moneys and appropriations, itemized estimates of revenues
- 194 and expenditures.
- 195 (ii) (A) The governor may also require other information under these guidelines and at
- 196 times as the governor may direct.
- 197 (B) These guidelines may include a requirement for program productivity and
- 198 performance measures, where appropriate, with emphasis on outcome indicators.
- 199 (b) The estimate for the Legislative Department as certified by the presiding officers of
- 200 both houses shall be included in the budget without revision by the governor.
- 201 (c) The estimate for the Judicial Department, as certified by the state court
- 202 administrator, shall also be included in the budget without revision, but the governor may make
- 203 separate recommendations on it.
- 204 (d) The governor may require the attendance at budget meetings of representatives of
- 205 public and higher education, state departments and institutions, and other institutions or
- 206 individuals applying for state appropriations.
- 207 (e) The governor may revise all estimates, except those relating to the Legislative
- 208 Department, the Judicial Department, and those providing for the payment of principal and
- 209 interest to the state debt and for the salaries and expenditures specified by the Utah
- 210 Constitution or under the laws of the state.
- 211 (8) The total appropriations requested for expenditures authorized by the budget may

not exceed the estimated revenues from taxes, fees, and all other sources for the next ensuing fiscal year.

(9) If any item of the budget as enacted is held invalid upon any ground, the invalidity does not affect the budget itself or any other item in it.

(10) (a) In submitting the budgets for the Departments of Health and Human Services and the Office of the Attorney General, the governor shall consider a separate recommendation in the governor's budget for funds to be contracted to:

(i) local mental health authorities under Section 62A-15-110;

(ii) local substance abuse authorities under Section 62A-15-110;

(iii) area agencies under Section 62A-3-104.2;

(iv) programs administered directly by and for operation of the Divisions of Substance Abuse and Mental Health and Aging and Adult Services;

(v) local health departments under Title 26A, Chapter 1, Local Health Departments; and

(vi) counties for the operation of Children's Justice Centers under Section 67-5b-102.

(b) In the governor's budget recommendations under Subsections (10)(a)(i), (ii), and (iii), the governor shall consider an amount sufficient to grant local health departments, local mental health authorities, local substance abuse authorities, and area agencies the same percentage increase for wages and benefits that the governor includes in the governor's budget for persons employed by the state.

(c) If the governor does not include in the governor's budget an amount sufficient to grant the increase described in Subsection (10)(b), the governor shall include a message to the Legislature regarding the governor's reason for not including that amount.

(11) (a) In submitting the budget for the Department of Agriculture, the governor shall consider an amount sufficient to grant local conservation districts and Utah Association of Conservation District employees the same percentage increase for wages and benefits that the governor includes in the governor's budget for persons employed by the state.

(b) If the governor does not include in the governor's budget an amount sufficient to grant the increase described in Subsection (11)(a), the governor shall include a message to the Legislature regarding the governor's reason for not including that amount.

(12) (a) In submitting the budget for the Utah State Office of Rehabilitation and the



Division of Services for People with Disabilities, the Division of Child and Family Services, and the Division of Juvenile Justice Services within the Department of Human Services, the governor shall consider an amount sufficient to grant employees of corporations that provide direct services under contract with those divisions, the same percentage increase for cost-of-living that the governor includes in the governor's budget for persons employed by the state.

(b) If the governor does not include in the governor's budget an amount sufficient to grant the increase described in Subsection (12)(a), the governor shall include a message to the Legislature regarding the governor's reason for not including that amount.

(13) (a) The Families, Agencies, and Communities Together Council may propose to the governor under Subsection 63M-9-201(4)(e) a budget recommendation for collaborative service delivery systems operated under Section 63M-9-402.

(b) The Legislature may, through a specific program schedule, designate funds appropriated for collaborative service delivery systems operated under Section 63M-9-402.

(14) The governor shall include in the governor's budget the state's portion of the budget for the Utah Communications Agency Network established in Title 63C, Chapter 7, Utah Communications Agency Network Act.

(15) (a) The governor shall include a separate recommendation in the governor's budget for funds to maintain the operation and administration of the Utah Comprehensive Health Insurance Pool.

(b) In making the recommendation the governor may consider:

(i) actuarial analysis of growth or decline in enrollment projected over a period of at least three years;

(ii) actuarial analysis of the medical and pharmacy claims costs projected over a period of at least three years;

(iii) the annual Medical Care Consumer Price Index;

(iv) the annual base budget for the pool established by the Commerce and Revenue Appropriations Subcommittee for each fiscal year;

(v) the growth or decline in insurance premium taxes and fees collected by the tax commission and the insurance department; and

(vi) the availability of surplus General Fund revenue under Section 63J-1-202 ~~and~~

~~Subsection 59-14-204(5)(b)]~~.

(16) In adopting a budget for each fiscal year, the Legislature shall consider an amount sufficient to grant local health departments, local mental health authorities, local substance abuse authorities, area agencies on aging, conservation districts, and Utah Association of Conservation District employees the same percentage increase for wages and benefits that is included in the budget for persons employed by the state.

(17) (a) In adopting a budget each year for the Utah Comprehensive Health Insurance Pool, the Legislature shall determine an amount that is sufficient to fund the pool for each fiscal year.

(b) When making a determination under Subsection (17)(a), the Legislature shall consider factors it determines are appropriate, which may include:

(i) actuarial analysis of growth or decline in enrollment projected over a period of at least three years;

(ii) actuarial analysis of the medical and pharmacy claims costs projected over a period of at least three years;

(iii) the annual Medical Care Consumer Price Index;

(iv) the annual base budget for the pool established by the Commerce and Revenue Appropriations Subcommittee for each fiscal year;

(v) the growth or decline in insurance premium taxes and fees collected by the tax commission and the insurance department from the previous fiscal year; and

(vi) the availability of surplus General Fund revenue under Section 63J-1-202 [~~and Subsection 59-14-204(5)(b)]~~.

(c) The funds appropriated by the Legislature to fund the Utah Comprehensive Health Insurance Pool as determined under Subsection (17)(a):

(i) shall be deposited into the enterprise fund established by Section 31A-29-120; and

(ii) are restricted and are to be used to maintain the operation, administration, and management of the Utah Comprehensive Health Insurance Pool created by Section 31A-29-104.

(18) In considering the factors in Subsections (15)(b)(i), (ii), and (iii) and Subsections (17)(b)(i), (ii), and (iii), the governor and the Legislature may consider the actuarial data and projections prepared for the board of the Utah Comprehensive Health Insurance Pool as it

305 develops its financial statements and projections for each fiscal year.

306 (19) The governor shall report, for each line item, the average annual dollar amount of  
307 staff funding associated with all positions that were vacant during the last fiscal year.

308 Section 5. **Effective date.**

309 This bill takes effect July 1, 2009.